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NOTE AND COMMENT.

A PARTNERSHIP AS A FARMER IN BANKRUPTCY.—After much uncertainty and difference of opinion among the courts as to the position of partnerships under the Bankruptcy Act certain phases of the problem were set at rest by the Supreme Court in *Francis* v. *McNeal*, 228 U. S. 695, 33 Sup. Ct. 701, 57 L. Ed. 1029. By that case it seems to have been authoritatively settled (1) that in determining the solvency or insolvency of a partnership the individual estates available for payment of firm debts are to be considered, and (2) that an adjudication of the firm as such draws into the proceeding the administration of the estates of members though they have not been adjudicated bankrupts as individuals. In considering the theretofore much mooted question as to partnerships being entities for purposes of bankruptcy, Mr. Justice HOLMES, speaking for the court said: "No doubt these clauses [§1, §5a, §14a] taken together recognize the firm as an entity for certain purposes, the most important of which after all, is the old rule as to the prior claims of partnership assets and that of individual debts upon the individual estate." For purposes of proceedings in bankruptcy it seems that partnerships are deemed to have a suable existence as firms separate and apart from the members, for a petition in bankruptcy may well be filed against "A & Co." It is not neces-

sary that the petition be against "A, B & C, trading as A & Co."; and the firm as such may be adjudicated a bankrupt without affecting the individuals or their estates, except as above noted.

In *H. D. Still's Sons* v. *American Nat. Bank, et al.*, 209 Fed. 749, the Circuit Court of Appeals for the Fourth Circuit had occasion to pass upon a novel and interesting question affecting partnerships in bankruptcy. It appeared that the alleged bankrupt was a partnership engaged chiefly in farming. The court concluded that a partnership so engaged was exempt from involuntary bankruptcy. The following provisions of Bankruptcy Act are important in this connection.

§ 1 (19). "Persons shall include corporations, except where otherwise specified, and officers, partnerships and women, etc."

§ 4b. "Any natural person, except a wage-earner, or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any * * * corporation, except, * * * may be adjudged an involuntary bankrupt, etc."

§ 5a. "A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt."

The correctness of the court's conclusion would seem to depend entirely upon whether or not a partnership as such is covered by "*Any natural person, except a wage-earner, or a person engaged chiefly in farming or the tillage of the soil.*" The exception of wage-earners and farmers is clearly a limitation upon "*Any natural person.*" So the question for consideration was, in short, whether a partnership as such is a natural person.

The expression "natural person" would seem to need no explanation; its meaning is obvious. If a partnership as such has an existence in bankruptcy separate and distinct from the natural persons composing the firm it would seem inevitably to follow that the firm as such is not a natural person. Congress has defined "person" as including a partnership, but in § 4b under the provisions of which a partnership engaged in farming must find its exemption, if any, from involuntary bankruptcy, Congress has used the expression "natural person," supposedly for some reason.

The court in the principal case seemed much influenced in arriving at its conclusion by the argument that there is no real reason why individuals when engaged in farming should be exempt while a partnership made up of those individuals should not be exempt when engaged in the same business. That argument addressed to the law-making body ought to be well nigh conclusive; but the court in deciding the principal case was concerned primarily not with what exemptions from involuntary bankruptcy *ought* to be recognized, but with what exemptions Congress had made. In view of the fact that in the present Bankruptcy Act Congress has apparently sought to provide a comprehensive treatment of the subject it would seem a proper rule of construction that no exemptions from bankruptcy proceedings should be recognized unless clearly within the exemptions provided for by Congress. It may perhaps well be doubted whether the court in the principal case was correct in its conclusion.

R. W. A.